

APR 10 2008

Appln. No. 10/710,923
Docket No. 158982 / GEM-0053-P**REMARKS / ARGUMENTS**

Claims 1-45 are pending in the application. Claims 14-45 have been withdrawn from consideration by the Examiner. Claims 1-13 stand rejected. Of the pending claims, Applicant herein provides clarifying remarks, for consideration by the Examiner, to traverse the rejections. No claim amendments have been made, and therefore under 37 CFR 1.121, no claim listing is provided herewith.

Applicant respectfully submits that the rejections under 35 U.S.C. §102(e) and 35 U.S.C. §103(a) have been traversed, that no new matter has been entered, and that the application is in condition for allowance.

Applicant acknowledges the Examiner's entry of the amendments made in the Amendment Paper dated February 11, 2008.

In the Amendment Paper dated February 11, 2008, Applicant made the following two comments:

- i) that this invention is not drawn to the same invention claimed in the earlier application; and
- ii) that the finality of the Final Action dated December 10, 2007 was premature.

In response to Applicant's above-noted comments, the Examiner states in this Advisory Action:

i) that Applicant's claim language including the phrase "in at least one of..." "means that the prior art only needs to show one of bi-ventricular pacing planning, atrial fibrillation planning, arterial flutter planning procedure, OR location and navigation of an interventional tool"; and

ii) that "all claims are drawn to the same invention claimed in the earlier application" because "use of the 'at least one of' language does not require 'in location and navigation of an interventional tool'".

Appln. No. 10/710,923
Docket No. 158982 / GEM-0053-P

Since Applicant wholeheartedly disagrees with both of the comments made by the Examiner for substantially the same reason (that is, Applicant respectfully submits that the Examiner is misreading the claim language, thereby resulting in a mischaracterization of the claimed invention), Applicant herein provides the following further clarifying remarks.

Claim 1 recites, inter alia,

“...*in* at least one of a bi-ventricular pacing planning, an atrial fibrillation planning, *and* an atrial flutter planning procedure, *and in* location and navigation of an interventional tool.”

By parsing the very language of the claim, it can be seen that Applicant is claiming a limitation directed to at least one of A, B and C, in combination with a limitation directed to D, where:

A is bi-ventricular pacing planning;

B is atrial fibrillation planning;

C is atrial flutter planning procedure; and

D is in location and navigation of an interventional tool.

That is, Claim 1 is directed to, inter alia, “computer executable instructions stored in a memory for using the volume of cardiac image data and the at least one viewable image *in at least one of a bi-ventricular pacing planning, an atrial fibrillation planning, and an atrial flutter planning procedure*”, *and is also directed to* “computer executable instructions stored in a memory for using the volume of cardiac image data and the at least one viewable image *in location and navigation of an interventional tool*.”

Applicant specifically used the conjunctive “and” twice in the subject limitation, once just before the phrase “an atrial flutter planning procedure”, and a second time just before the phrase “in location and navigation of an interventional tool”, which necessarily requires inclusion of the limitation “in location and navigation of an interventional tool”

Appl. No. 10/710,923
Docket No. 158982 / GIM-0053-P

in addition to requiring inclusion of "at least one of a bi-ventricular pacing planning, an atrial fibrillation planning, and an atrial flutter planning procedure".

In view of the foregoing, Applicant wholeheartedly disagrees with the Examiner, and submits that "in location and navigation of an interventional tool" is absolutely required, and that any rejection of Claim 1 must be based on prior art that discloses or teaches location and navigation of an interventional tool.

For all of the reasons already set forth in Applicant's Amendment Paper dated February 11, 2008, which are herein incorporated by reference rather than unnecessary repetition, Applicant submits that Okerlund fails to disclose an operator interface system having computer executable instructions stored in a memory for using a volume of cardiac image data and at least one viewable image *in location and navigation of an interventional tool*, as claimed. And further submits that the combination of Keidar, Subramanyan and Chen fails to teach or suggest each and every element of the claimed invention arranged so as to perform as the claimed invention performs.

In view of the foregoing, Applicant respectfully submits that the Examiner's rejections under 35 U.S.C. §102(e) and 35 U.S.C. §103(a) have been traversed, and requests that the Examiner reconsider and withdraw of these rejections.

In addition, Applicant respectfully submits that the earlier Final Action was indeed premature for reasons previously stated and reiterated above, and therefore respectfully re-requests withdrawal thereof if notice of allowance is not forthcoming.

If a communication with Applicant's Attorneys would assist in advancing this case to allowance, the Examiner is cordially invited to contact the undersigned so that any remaining issues may be promptly resolved.

The Commissioner is hereby authorized to charge any additional fees that may be required for this amendment, or credit any overpayment, to Deposit Account No. 07-0845.

Appln. No. 10/710.923
Docket No. 158982 / GEM-0053-P

In the event that an extension of time is required, or may be required in addition to that requested in a petition for extension of time, the Commissioner is requested to grant a petition for that extension of time that is required to make this response timely and is hereby authorized to charge any fee for such an extension of time or credit any overpayment for an extension of time to the above-identified Deposit Account.

Respectfully submitted,

CANTOR COLBURN LLP

Applicant's Attorneys

By: 

David Arnold

Registration No: 48,894

Customer No. 23413

Address: 20 Church Street, 22nd Floor, Hartford, CT 06103
Telephone: (860) 286-2929
Fax: (860) 286-0115